PUBLIC PROSECUTOR

v.

WONG CHAK HENG

HIGH COURT MALAYA, KUALA LUMPUR
NH CHAN J
[CRIMINAL APPEAL NOS. 134 & 135 OF 1982]
23 JANUARY 1985

CRIMINAL LAW AND PROCEDURE: *Theft of spare tyres and rims - Whether fines sufficient penalty.*

The respondent was fined RM200 and RM300 respectively for two separate cases of theft of spare tyres and rims. The respondent had no previous conviction and his Counsel said that the respondent was only a member of a gang that stole tyres. His Counsel pleaded that the respondent did not therefore commit the offence by himself and that in fact, the respondent had helped the police in the recovery of the tyres. The Public Prosecutor appealed against the inadequacy of the sentence imposed on the respondent for the two offences.

Held:

[1] That the stealing of motorcar parts and accessories is very rife at present.

[2] In order to protect the interests of the public and to deter such crimes, stricter sentences should be imposed.

[3] The above facts fall into the category of individual deterrence.

[4] Consequently, an immediate prison sentence is necessary. The Judge therefore sentenced the respondent to 18 months' imprisonment for the first offence and two years for the second offence. Both the fines were to remain undisturbed.

[Appeal allowed.]

Cases referred to:
Reg. v. Smith [1978] 67 Cr App R 211
Reg. v. Davies [1978] 67 Cr App R 207
Reg. v. Sargeant [1974] 60 Cr App R 74
Reg. v. Curran [1973] 57 Cr App R 945

Legislation referred to:
Penal Code, s. 379

For the appellant - Lee Oi Kuan; FC
For the respondent - L.C. Chong; M/s. Jagjit Singh & Co.

JUDGMENT

NH Chan J:

Wong Chak Heng, then aged 23, appeared at the Magistrate's Court at Kuala Lumpur on 17 August 1982 when he pleaded guilty to two cases of theft, the first (Arrest Case A808/82) being the theft of the spare tyre and the sports rim of a Datsun 120Y motorcar and the second (Arrest Case A812/82) being the theft of the spare tyre together with its rim of a Ford Laser motorcar. The first offence was committed on 22 January 1982 and the second offence was committed on 1 February 1982. Both cases were heard on the same day and for

the first offence he was fined RM200 and for the second offence he was fined RM300. The value of the property that was stolen was worth RM220 in the first case and RM300 in the second case. Wong had no previous conviction. The tyres were subsequently recovered and according to Mr. Chong, his Counsel, Wong had helped the police in their recovery. It was urged on his behalf that he did not commit the offences by himself. He was a member of a gang that went out to steal tyres. He was arrested because the motorcar which he had used to commit the offences was traced to him. He is at present working as a rubber tapper and he is living with his parents. The Public Prosecutor now appeals against the inadequacy of the sentence imposed on Wong for the two offences. They were both offences under s. 379 of the Penal Code.

In the case of *Reg. v. Smith* [1978] 67 Cr App R 211, I find Lawton LJ saying this in connection with burglary of private dwelling houses, at p. 212:

> It may be necessary to set out and stress the reasons why at the present time offences of this kind should be dealt with severely and usually by a custodial sentence. It is within the knowledge of this Court, and the criminal statistics bear it out, that one of the growth criminal industries in this country is burglary. The particular type of burglary which is becoming very common indeed is breaking into other people's homes. On all sides members of the public, if they have not been burgled themselves, hear that their friends and relatives have been. This Court knows that when there is a burglary in a house great distress is caused. Not only is there a loss of property but there is induced a feeling of insecurity. This Court knows that when the householders are women they sometimes worry a great deal about what has happened to them. It has been said, and rightly said, that when a house has been burgled it never seems the same again.
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> This Court, for some months has been pointing out to trial Judges, and it does so again, that burglary in the form of housebreaking is a very serious crime indeed. The public are entitled to be protected against burglars. In the opinion of this Court they are not likely to be protected if lenient sentences are passed.

Although Lawton LJ spoke on burglary of private dwelling houses, there are on the other hand some other offences which are particularly rife at the moment in this country. For example; robberies, offences involving serious violence, use of a weapon to wound, extortion, burglary of private dwelling houses, the stealing of car accessories from parked vehicles, motorcar theft and purse or handbag snatching in the streets or in stores. Crimes of that kind are rife at the present time and it is quite plain that where a person is charged with any of the offences which I have mentioned then the Courts inevitably must take a serious view.

It is not safe to park one's motor vehicle anywhere in the City or in any of the larger towns in the country. This is because motorcar theft and the theft of articles from motorcars are a daily occurrence throughout the country. In ordinary circumstances, petty theft would not have attracted any immediate sentence of imprisonment. But when one considers the extent to which the stealing of motorcar parts and accessories is rife at the present day, then the Court inevitably must view such an offence as a very serious crime indeed. Let it be repeated: it may be necessary to set out and stress the reasons why at the present time offences of this kind should be dealt with severely and usually by a custodial sentence. On all sides members of the public, if they have not lost their cassette players or radios or even their cars, hear that their friends and relatives have. The public are entitled to be protected against such offenders. In the opinion of this Court, they are not likely to be protected if lenient sentences are passed. Offenders are not likely to be discouraged by sentences which do not involve loss of liberty.

If an immediate prison sentence is necessary, as I believe to be the case here, then it should be consistent with the duty to protect the interests of the public and to punish and deter the criminal. To use the words of Lawton LJ in *Reg. v. Davies* [1978] 67 Cr App R 207, 210:

> the Courts have to make it clear that crime does not pay and the only way they can do so is by the length of sentences. Sentences show the Court's disapproval, on behalf of the community, of particular types of criminal conduct.

In the instant case, Wong is a first offender. The sentencing Court must realise, that when one speaks of deterrence that there are two aspects of deterrence. This is how it was put by Lawton LJ in *Reg. v. Sargeant* [1974] 60 Cr App R 74, 77:

> There are two aspects of deterrence: deterrence of the offender and deterrence of likely offenders.

Looking at it from the point of view of individual deterrence, I find MacKenna J saying this, in *Reg. v. Curran* [1973] 57 Cr App R 945, at 947, 948:

> As a general rule it is undesirable that a first sentence of immediate imprisonment should be very long, disproportionate to the gravity of the offence, and imposed... for reasons of general deterrence, that is for reasons of general deterrence, that is as a warning to others. The length of a first sentence is more reasonably determined by considerations of individual deterrence.

Applying what has been said by Mackenna J to an offender like Wong in the present case, the length of a first sentence of imprisonment is to be determined by considerations of individual deterrence. Looking at it from that point of view, I think that a sentence of 18 months' imprisonment for the first offence is proper. The fine of RM200 is to remain undisturbed. In respect of the second offence, I think a concurrent sentence of two years' imprisonment in addition to the RM300 fine is appropriate.

The appeal of the Public Prosecutor is, therefore, allowed.

Also found at [1985] 1 CLJ 375